

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

AMANDA M.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C20-5450 RSM

**ORDER REVERSING DENIAL OF  
BENEFITS AND REMANDING  
FOR AN AWARD OF BENEFITS**

Plaintiff seeks review of the denial of her application for Supplemental Security Income Benefits. Plaintiff contends the ALJ erred by rejecting her symptom testimony, the opinions of Brian Zolnikov, Ph.D., and the opinions of Margaret Glissmeyer, PA-C. Pl. Op. Br. (Dkt. 13) at 1. As discussed below, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for an award of benefits.

**BACKGROUND**

Plaintiff is 35 years old, has at least a high school education, and has no past relevant work. Admin. Record ("AR") (Dkt. 11) 648. On August 31, 2016, Plaintiff applied for benefits, later alleging disability as of August 31, 2016. AR 15, 216–24. Plaintiff's applications were denied initially and on reconsideration. AR 122–34, 136–50. ALJ Allen Erickson conducted a hearing on March 6, 2018, after which he issued a decision finding Plaintiff not disabled. AR

1 15–29, 34–79. The Appeals Council denied review. AR 1–3.

2 Plaintiff then sought review in this Court. *See* AR 721. On April 15, 2020, U.S. District  
3 Judge Benjamin H. Settle issued an order reversing the Commissioner’s denial of benefits, and  
4 remanding the matter for further proceedings. AR 727–35. Judge Settle held the ALJ erred in  
5 rejecting Plaintiff’s testimony, the only issue on which Plaintiff alleged error. *See id.*

6 On remand, ALJ Erickson held a new hearing. AR 657–89. Plaintiff requested a closed  
7 period of disability from her alleged onset date of August 31, 2016, through September 30, 2019.  
8 AR 638, 665. On April 15, 2021, ALJ Erickson issued a new decision, once again finding  
9 Plaintiff not disabled. AR 638–50. In relevant part, the ALJ held Plaintiff had severe  
10 impairments of anxiety disorder, dyslexia, posttraumatic stress disorder, and major depressive  
11 disorder. AR 641. The ALJ held Plaintiff had the residual functional capacity to perform the  
12 full range of work at all exertional levels, with non-exertional limitations. AR 644. She could  
13 understand, remember, and apply short, simple instructions. *Id.* She could perform routine,  
14 predictable tasks outside of a fast-paced production-type environment. *Id.* She could make  
15 simple decisions. *Id.* She could tolerate exposure to a few routine workplace changes. *Id.* She  
16 could have occasional interaction with coworkers, but no interaction with the general public. *Id.*

17 The Appeals Council did not assume jurisdiction after the ALJ’s latest decision, and thus  
18 it became the Commissioner’s final decision. *See* 20 C.F.R. § 416.1484(d). Plaintiff seeks  
19 judicial review of this latest decision.

## 20 **DISCUSSION**

21 This Court may set aside the Commissioner’s denial of Social Security benefits only if  
22 the ALJ’s decision is based on legal error or not supported by substantial evidence in the record  
23 as a whole. *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020). The ALJ is responsible for

1 evaluating evidence, resolving conflicts in medical testimony, and resolving any other  
 2 ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Although  
 3 the Court is required to examine the record as a whole, it may neither reweigh the evidence nor  
 4 substitute its judgment for that of the ALJ. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.  
 5 2002). When the evidence is susceptible to more than one interpretation, the ALJ's  
 6 interpretation must be upheld if rational. *Ford*, 950 F.3d at 1154. This Court "may not reverse  
 7 an ALJ's decision on account of an error that is harmless." *Molina v. Astrue*, 674 F.3d 1104,  
 8 1111 (9th Cir. 2012).

#### 9 **A. Plaintiff's Testimony**

10 Plaintiff argues the ALJ erred by failing to give clear and convincing reasons for rejecting  
 11 her testimony. Pl. Op. Br. at 2–7. Plaintiff testified she had panic attacks and social anxiety  
 12 during the alleged disability period. AR 48, 254, 293, 667, 679. She testified she had two to  
 13 three panic attacks per week, lasting a half hour to an hour each. AR 679. She testified she was  
 14 prescribed medications, but they did not work or made her sick. AR 51–52, 668. She testified  
 15 she rarely left her house. AR 59, 257. She testified she had panic attacks when she was working  
 16 at Goodwill in an accommodated job, and would have to leave work early two days a week. AR  
 17 68–69, 682. She testified she was let go from that job. AR 682.

18 The Ninth Circuit has "established a two-step analysis for determining the extent to  
 19 which a claimant's symptom testimony must be credited." *Trevizo v. Berryhill*, 871 F.3d 664,  
 20 678 (9th Cir. 2017). The ALJ must first determine whether the claimant has presented objective  
 21 medical evidence of an impairment that "could reasonably be expected to produce the pain or  
 22 other symptoms alleged." *Id.* (quoting *Garrison v. Colvin*, 759 F.3d 995, 1014–15 (9th Cir.  
 23 2014)). If the claimant satisfies the first step, and there is no evidence of malingering, the ALJ

1 may only reject the claimant's testimony "'by offering specific, clear and convincing reasons for  
2 doing so. This is not an easy requirement to meet.'" *Trevizo*, 871 F.3d at 678 (quoting  
3 *Garrison*, 759 F.3d at 1014–15).

4 The ALJ found Plaintiff met the first step, but discounted her testimony regarding the  
5 severity of her symptoms. The ALJ first reasoned Plaintiff "has received minimal treatment for  
6 anxiety, with few prescribed medications and periodic counseling." AR 645. Judge Settle  
7 rejected this reason the last time this case was before the Court, and the ALJ added no further  
8 information that would cause the Court to revisit that determination. *See* AR 733. This reason  
9 thus fails.

10 The ALJ next reasoned Plaintiff's testimony was inconsistent with the overall medical  
11 record. AR 645–46. The ALJ's reasoning here is essentially the same as it was the last time this  
12 matter was before the Court. *See* AR 23–24. The ALJ noted Plaintiff had some normal mental  
13 status findings, but ignored that providers documented anxiety on many occasions, including an  
14 emergency room visit for an anxiety attack. *See, e.g.*, AR 378, 391, 399, 401, 412, 422, 554–55,  
15 568, 581, 591, 606, 966–71. That reasoning fails here for the same reasons it failed before Judge  
16 Settle. *See* AR 732–34; *see also Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015).

17 The ALJ last reasoned Plaintiff's testimony was inconsistent with her activities of daily  
18 living. AR 646. This reasoning is again the same as the last time this matter was before the  
19 Court. *See* AR 24. Plaintiff's ability to prepare her own meals, care for her daughter, socialize  
20 online, and maintain a driver's license does not contradict her testimony that she has panic  
21 attacks and rarely leaves her own house. *See Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)  
22 (holding claimants need not be "utterly incapacitated to be eligible for benefits," and noting  
23 "many home activities are not easily transferable to what may be the more grueling environment

of the workplace”). The ALJ thus erred in rejecting Plaintiff’s testimony as inconsistent with her daily activities.

### **B. Dr. Zolnikov’s Opinions**

Plaintiff argues the ALJ failed to give valid reasons for rejecting Dr. Zolnikov’s opinions. Pl. Op. Br. at 7. Dr. Zolnikov examined Plaintiff in May 2018. AR 909–17. Dr. Zolnikov opined Plaintiff was markedly limited in her ability to understand, remember, and persist in tasks by following detailed instructions, perform activities within a schedule, maintain attendance, perform routine tasks without special supervision, communicate and perform effectively in a work setting, and complete a normal work day or week without interruptions from her psychological symptoms. AR 910.

An ALJ may only reject the uncontradicted opinions of a treating or examining doctor by providing “‘clear and convincing’ reasons.”<sup>1</sup> *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)). If the treating or examining doctor’s opinions are contradicted, the ALJ must provide “‘specific and legitimate reasons’ supported by substantial evidence in the record for so doing.” *Lester*, 81 F.3d at 830 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). Dr. Zolnikov’s opinions were contradicted by the opinions of Gary Nelson, Ph.D., and Eugene Kester, M.D., so the specific and legitimate standard applies. *See* AR 130–32, 146–48.

The ALJ gave Dr. Zolnikov’s opinions “little weight,” reasoning that they were “inconsistent with and unsupported by the overall record and [Plaintiff’s] demonstrated

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<sup>1</sup> The Commissioner issued amended regulations for evaluating medical evidence, but the amended regulations apply only to claims filed on or after March 27, 2017, and therefore are not relevant to this case. *See* 20 C.F.R. § 416.927 (applicable to claims filed before March 27, 2017); 20 C.F.R. § 416.920c (applicable to claims filed after March 27, 2017).

1 functioning.” AR 648. The ALJ did not add any specifics here, presumably relying on his  
2 reasoning as described in addressing Plaintiff’s testimony. *See id.* As that reasoning failed with  
3 respect to Plaintiff’s testimony, it also fails with respect to Dr. Zolnikov’s opinions.

4 **C. Ms. Glissmeyer’s Opinions**

5 Plaintiff argues the ALJ failed to give valid reasons for rejecting Ms. Glissmeyer’s  
6 opinions. Pl. Op. Br. at 7–8. The Court need not address this contention because, as explained  
7 below, this matter is being remanded for an award of benefits.

8 **D. Scope of Remand**

9 Plaintiff asks the Court to remand this matter for an award of benefits. Pl. Op. Br. at 8.  
10 Remand for an award of benefits “is a rare and prophylactic exception to the well-established  
11 ordinary remand rule.” *Leon v. Berryhill*, 880 F.3d 1041, 1044 (9th Cir. 2017). The Ninth  
12 Circuit has established a three-step framework for deciding whether a case may be remanded for  
13 an award of benefits. *Id.* at 1045. First, the Court must determine whether the ALJ has failed to  
14 provide legally sufficient reasons for rejecting evidence. *Id.* (citing *Garrison*, 759 F.3d at 1020).  
15 Second, the Court must determine “whether the record has been fully developed, whether there  
16 are outstanding issues that must be resolved before a determination of disability can be made,  
17 and whether further administrative proceedings would be useful.” *Treichler v. Comm’r of Soc.*  
18 *Sec. Admin.*, 775 F.3d 1090, 1101 (9th Cir. 2014) (internal citations and quotation marks  
19 omitted). If the first two steps are satisfied, the Court must determine whether, “if the  
20 improperly discredited evidence were credited as true, the ALJ would be required to find the  
21 claimant disabled on remand.” *Garrison*, 759 F.3d at 1020. “Even if [the Court] reach[es] the  
22 third step and credits [the improperly rejected evidence] as true, it is within the court’s discretion  
23 either to make a direct award of benefits or to remand for further proceedings.” *Leon*, 880 F.3d

1 at 1045 (citing *Treichler*, 773 F.3d at 1101).

2 Plaintiff has met each step of the credit-as-true framework. First, Plaintiff has established  
3 the ALJ erred in rejecting Plaintiff's testimony and Dr. Zolnikov's opinions. Second, there are  
4 no outstanding issues for which remand is necessary. The ALJ has had two opportunities to  
5 review Plaintiff's testimony, and has twice rejected it on the same erroneous grounds. The  
6 ALJ's analysis of the medical opinions relied on the same erroneous grounds, so further  
7 administrative review would serve no useful purpose.

8 Third, if Plaintiff's erroneously rejected testimony is credited as true, the evidence  
9 requires a finding of disability. Plaintiff testified she would get panic attacks two to three times a  
10 week lasting between a half hour and an hour. AR 679. The vocational expert testified a person  
11 would be precluded from work if she was unable to perform tasks for a half hour to an hour at  
12 unpredictable times during the workday due to panic attacks. AR 687. Plaintiff was therefore  
13 unable to work due to her impairments, and disabled during the closed period of August 31,  
14 2016, through September 30, 2019.

### 15 CONCLUSION

16 For the foregoing reasons, the Commissioner's final decision is **REVERSED** and this  
17 case is **REMANDED** for an award of benefits.

18 DATED this 25<sup>th</sup> day of January, 2022.

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21 RICARDO S. MARTINEZ  
22 CHIEF UNITED STATES DISTRICT JUDGE  
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